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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 170104016-7732-02]

RIN 0648-XF138

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Approval of Modifications to a Regulatory Exemption for Groundfish Sectors

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: Through this action, NMFS approves a change to a regulatory exemption for sector vessels in the Northeast multispecies fishery for fishing years 2017 and 2018. This action is necessary to respond to a request from sectors to change a previously approved exemption. The change is intended to increase the use of the sector exemption, which allows sector vessels to combine small-mesh exempted fishing trips and groundfish trips, and to provide sector vessels with additional fishing opportunities.

DATES: The modified regulatory exemption is effective [*insert date of filing in the FEDERAL REGISTER*], through April 30, 2019.

ADDRESSES: Copies of each sector's final operations plan are available from the NMFS Greater Atlantic Regional Fisheries Office: John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Kyle Molton, Fishery Management Specialist, (978) 281-9236. To review *Federal Register* documents referenced in this rule, you can visit: <http://www.greateratlantic.fisheries.noaa.gov/sustainable/species/multispecies>.

SUPPLEMENTARY INFORMATION:

Background

A sector is a group of persons (three or more persons, none of whom have an ownership interest in the other two persons in the sector) holding limited access groundfish permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time. Sectors are self-selecting, meaning each sector can choose its members. The Northeast multispecies sector management system allocates a portion of the NE multispecies stocks to each sector. These annual sector allocations are known as annual catch entitlements (ACEs) and are based on the collective fishing history of a sector's members. Sectors may receive allocations of large-mesh NE multispecies stocks with the exception of Atlantic halibut, windowpane flounder, Atlantic wolffish, and ocean pout, which are non-allocated species. The ACEs are a portion of a stock's annual catch limit (ACL) available to commercial NE multispecies vessels within a sector. A sector determines how to harvest its ACEs and may decide to limit operations to fewer vessels.

Sectors submit operations plans and contracts to us for approval. We must approve a sector's operations plan in order to allocate ACE to the sector and for the sectors to operate. Because sectors elect to receive an allocation under a quota-based system, the Northeast Multispecies Fishery Management Plan (FMP) grants sector vessels several "universal" exemptions from the FMP's effort controls. Sectors may request additional exemptions to streamline operations for sector vessels and to increase economic opportunities. We review

these requests for consistency with the NE Multispecies FMP and other FMPs, as well as for resource and community impacts. We may approve requested exemptions that benefit sector vessels and that are consistent with the goals and objectives of the relevant FMPs. Sectors are prohibited from requesting exemptions from permitting restrictions, gear restrictions designed to minimize habitat impacts, and most reporting requirements.

Modified Sector Exemption

Modifications to the Sectors Small-Mesh Fishery Exemption Area

On April 28, 2017, we published an interim final rule (82 FR 19618) that approved sector operations plans, granted regulatory exemptions for sectors, and provided preliminary allocations of annual catch entitlements to sectors for the start of the 2017 fishing year. This interim final rule included consideration of a request from sectors to modify the Sectors Small-Mesh Fishery Exemption, which was first granted in fishing year 2015.

This exemption allows vessels to combine sector and small-mesh fishery trips in two discrete areas in Southern New England. Vessels may first target groundfish with large-mesh trawl gear and then switch to small-mesh trawl gear to target exempted fishery species like squid. These combined trips are more efficient and allow sector vessels to increase revenue and profitability on a single trip. There are additional requirements for gear modifications on the small-mesh portion of the trip to reduce bycatch of groundfish, and all legal groundfish caught on the small-mesh portion of the trip must be kept and counted against the sector's allocation. A vessel using this exemption is still required to meet the same at-sea monitoring coverage as normal groundfish trips, and is also required to submit a catch report through its Vessel Monitoring System (VMS) unit when switching gears.

The previously approved small-mesh sector exemption area includes two discrete areas, one that parallels the southern shore of Long Island to the waters just off Narragansett Bay, and a second area south of Martha's Vineyard (Figure 1). Sectors requested to modify the area to include all of statistical areas 537, 539 and 613, which would expand the geographic footprint of the exemption area, to better reflect fishing practices in the area and increase efficiency and opportunities for sector vessels (Figure 2). We received one public comment on this proposed change to the Sectors Small-Mesh Fishery Exemption. The comment supported approval of the modification to the exemption as proposed.

We are granting the modification to the exemption area, but as noted in the April 28, 2017, interim final rule, we are excluding areas that overlap with existing year-round groundfish closed areas or southern windowpane flounder accountability measure (AM) areas, regardless of whether the AMs are triggered, to be consistent with the goals and objectives of the NE Multispecies FMP. We are excluding the overlapping southern windowpane flounder AM areas because of concerns about potential interactions with windowpane flounder and other regulated groundfish species within the AM area. As with all sector exemptions, we will continue to monitor the use of the updated exemption, as well as any future changes to area management that the New England Fishery Management Council recommends.

All other requirements of the Sectors Small-Mesh Fishery Exemption remain unchanged from those previously approved and implemented. Vessels using the exemption must fish with one of three trawl gear modifications when using small mesh: Drop-chain sweep with a minimum of 12 inches (30.48 cm) in length; a large-mesh belly panel with a minimum of 32-inch (81.28-cm) mesh size; or an excluder grate secured forward of the codend with an outlet hole forward of the grate with bar spacing of no more than 1.97 inches (5.00 cm) wide. These

gear modifications, when fished properly, have been shown to reduce the catch of legal and sub-legal groundfish stocks.

As in previously approved versions of the exemption, in order to facilitate proper coverage levels and assist with enforcement, the vessel is required to declare their intent to use small mesh to target small-mesh species by submitting a trip start hail through its VMS unit prior to departure. Trips declaring this exemption must stow their small-mesh gear and use their large-mesh gear first, and once finished with the large mesh, must submit a Multispecies Catch Report via VMS of all catch on board at that time and indicate that the small-mesh gear will now be fished. Once the Catch Report is sent, the vessel can then deploy small-mesh with the required modifications in the specific areas (see map above), outside of the Nantucket Lightship Closed Area, at which point, the large mesh cannot be redeployed. Any legal-sized allocated groundfish stocks caught during these small-mesh hauls must be landed and the associated landed weight (dealer or vessel trip report (VTR)) will be deducted from the sector's ACE.

Figure 1. Previously Approved Sectors Small-Mesh Fishery Exemption Areas, and Overlapping Southern Windowpane Accountability Measure and Groundfish Closed Areas.

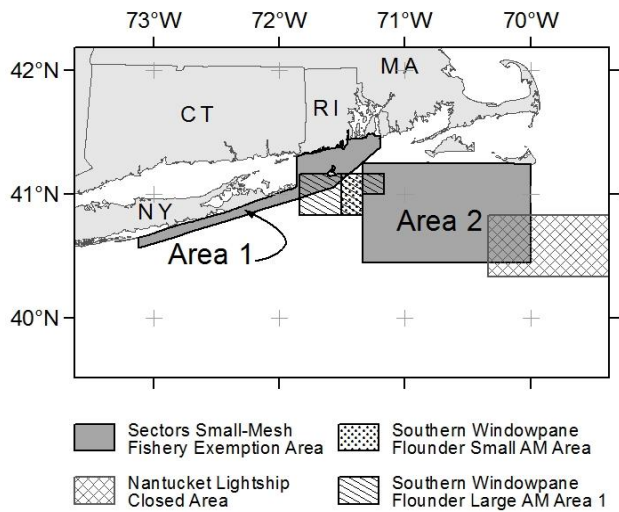
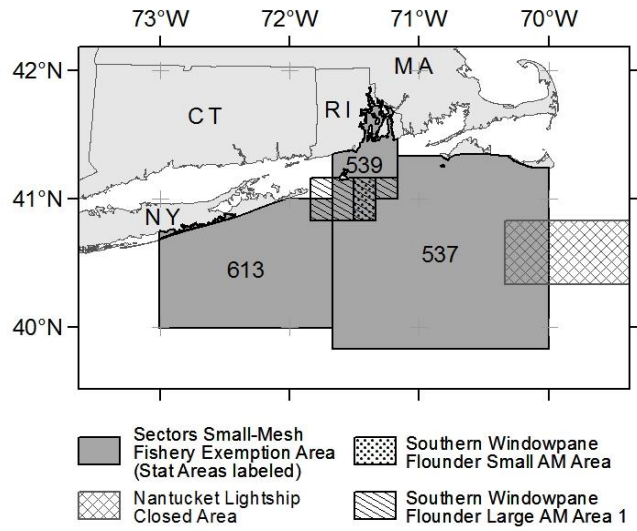


Figure 2. Modified Sectors Small-Mesh Fishery Exemption Area, and Overlapping Southern Windowpane Accountability Measure and Groundfish Closed Areas.



Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator (AA) has determined that this final rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This action is exempt from the procedures of Executive Order 12866 because this action contains no implementing regulations.

This final rule is not an EO 13771 regulatory action because it is not significant under EO 12866.

This final rule does not contain policies with Federalism or “takings” implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

The AA finds good cause, under authority provided in 5. U.S.C. 553(d)(1), to waive the 30-day delay in effective date because a delay in effectiveness would be contrary to the public interest. This rule does not impose any new requirements or costs on industry for which industry needs time to prepare to comply. Groundfish sectors requested this exemption to provide greater operational flexibility and to increase fishing opportunities. Delaying its effectiveness would unnecessarily restrict their fishing and lead to lost economic opportunity and efficiencies for sector vessels. Additionally, the small-mesh exemption is typically used by sector vessels in the fall. Because this rule changes the exemption area to increase use of the exemption, a delay in effectiveness would prevent sector vessels from the benefit of this change for the fall 2017 season, thus undermining the intent of the rule. The interim final rule, which proposed this action, was originally delayed as a result of the untimely submission of Framework Adjustment 56 by the New England Fishery Management Council, which prevented us from coordinating the

publishing of the sector rule and the Framework 56 rulemaking in time for May 1, 2017 start of the 2017 fishing year. For all of these reasons, a 30-day delay in effectiveness of this rule would be contrary to the public interest.

This final rule is exempt from the procedures of the Regulatory Flexibility Act because the preceding interim final rule was issued without opportunity for prior notice and comment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 15, 2017.

Chris Oliver,

Assistant Administrator for Fisheries,

National Marine Fisheries Service.

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